STATE OF NEVADA

PUBLIC UTILITIES COMMISSION

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Executive Director

July 12, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

**RE: *Ex Parte* Notification and Withdrawal of Petition for Waiver
WC Docket Nos. 11-42, 03-109, 12-23; and CC Docket No. 96-45**

Madam Secretary:

In accordance with Section 1.1206 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. § 1.1206, we hereby provide you with notice of an *ex parte* presentation in connection with the above-captioned proceeding. In addition, we withdraw our Petition for Waiver.

On Wednesday, July 11, 2012, Anna Penrose-Levig, Assistant General Counsel of the Public Utilities Commission of Nevada ("PUCN") had a telephonic conference call with Kimberly Scardino, Deputy Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC, and Garnet Hanly of the Wireline Competition Bureau, FCC.

Ms. Penrose-Levig discussed the Petition for Waiver filed by the PUCN in the above-referenced proceedings on May 23, 2012, and provided a copy of the Declaratory Order issued by the PUCN on July 5, 2012, in Docket No. 12-03019 (enclosed).

As the Petition for Waiver explained, Nevada Revised Statutes ("NRS") 707.480 requires an eligible telecommunications carrier ("ETC") in Nevada to automatically enroll within 60 days any existing customer for Lifeline service if that customer is on the list of eligible customers provided by Nevada's Department of Health and Human Services. The creation and distribution of the list from Nevada's Department of Health and Human Services is controlled by NRS 707.470,which provides that every 6 months Nevada's Department of Health and Human Services "shall provide to each [ETC] an updated list of the eligible customers in this State." NRS 707.470(2). Once this list is sent to the ETCs every 6 months, the ETC has 60 days to enroll any of the ETC's existing subscribers that are on the list from the Department of Health and Human Services.

To the extent that the process outlined in Nevada statutes is not consistent with the FCC's rules, the PUCN's Declaratory Order implements a hybrid approach that includes the distribution of

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a list by the Department of Health and Human Services, but then requires ETCs to comply with the FCC's certification requirements prior to enrolling any new subscriber. The hybrid approach, in practice, eliminates automatic enrollment.

Ms. Penrose-Levig requested confirmation that the Declaratory Order sufficiently addresses the FCC's requirements such that Nevada no longer requires a waiver from the requirements of sections 54.407(d), 54.410(b)(2) and (c)(2) of the FCC's rules. The FCC representatives indicated that they understand the process described in the PUCN's Declaratory Order, and withdrawal of the Petition for Waiver is appropriate.

The PUCN hereby withdraws its Petition for Waiver in the above-captioned proceeding.

If you have any questions or require any additional information, please contact the undersigned counsel.

Sincerely,

Jan J. Cohen, Esq.
General Counsel
Anna Penrose-Levig, Esq.
Assistant General Counsel

Enclosure

cc: Kimberly Scardino (via email)
Garnet Hanly (via email)
Anne-Marie Cuneo, Directory of Regulatory Operations Staff, PUCN (via e-mail)
Tamara Cordova, Staff Counsel, PUCN (via-email)

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Investigation and rulemaking regarding recent Federal Communications Commission decisions that could affect all Nevada telecommunication carriers.	))))	Docket No. 12-03019

At a general session of the Public Utilities Commission of Nevada, held at its offices on June 27, 2012.

PRESENT: Chairman Alaina Burtenshaw
Commissioner Rebecca D. Wagner
Commissioner David Noble
Assistant Commission Secretary Breanne Potter

DECLARATORY ORDER

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

I. INTRODUCTION

The Federal Communications Commission ("FCC") released an order concerning a broad transformation of the federal Universal Service Fund ("USF") and Intercarrier Compensation ("ICC") regimes, generally referred to as the USF/ICC Transformation Order.[1] Additionally, the FCC released another order regarding reformation of the federal universal service Lifeline program, generally referred to as the Lifeline Reform Order.[2] The Lifeline Reform Order resulted in comprehensive changes to the federal Lifeline program, including the eligibility and administration requirements or functions for the program. The Commission opened this investigation to consider and implement the FCC's USF/ICC Transformation Order and the Lifeline Reform Order.

The FCC's new regulations under the Lifeline Reform Order became effective on June 1, 2012. Providers of telecommunications service in Nevada were obligated to meet certain requirements by this date in order to continue receiving federal Lifeline funding.

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[1] *In the Matter of Connect American Fund, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92 and 96-45, and WT Docket No. 10-208, FCC 11-161 (rel. Nov. 18, 2011).

[2] *In the Matter of Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 11-42, 03-109 and 12-23, and CC Docket No. 96-45, FCC 12-11 (rel. Feb. 6, 2012).

DOCUMENT REVIEW AND APPROVAL ROUTING

DRAFTED BY: SAC

FINAL DRAFT ON: 6 / 28 / 12 AT 4 : 30 P M

REVIEWED & APPROVED BY:		DATE:
☐ ADMIN / ASST. ( )		/ /
☒ COMM / COUNSEL	JJC	6 / 28 / 12
☐ SECRETARY / ASST. SEC.		/ /
☐ OTHER ( )		/ /

II. SUMMARY

The Commission finds that it is appropriate to make certain declarations in this docket to ensure that providers of telecommunications service in Nevada are legally capable of complying with the new FCC regulation requirements regarding eligibility for federal Lifeline funding.

Specifically, the Commission declares that the term "eligible customer" as used in the Nevada Revised Statutes ("NRS") 707.480 shall be read in harmony with the FCC's new requirements. A customer shall not be considered an "eligible customer" for purposes of NRS 707.480 until such time as the eligible telecommunications carrier ("ETC") has determined that the customer meets all of the FCC's new requirements as set forth in the Lifeline Reform Order and the corresponding Code of Federal Regulations ("CFR").

ETCs seeking reimbursement for providing a federal Lifeline discount to customers must perform the following, in accordance with NRS 707.480, the FCC's Lifeline Reform Order and the federal regulations adopted as part of the Lifeline Reform Order:

(a) Upon receipt of a list of eligible customers from the Department of Health and Human Services ("Department"), an ETC shall determine whether any of its current customers are on the list. *See* NRS 707.470.

(b) If an ETC has identified current customers who are on the list of eligible customers but who have not subscribed to Lifeline service, then the ETC shall send out notifications and provide such customers with the new certification forms required by the FCC's regulations. The time period for completing this process is set forth in the Nevada statutes. *See* NRS 707.480(1).

(c) If a customer does not specifically decline Lifeline service and the customer returns the new FCC certification form to the ETC in accordance with the Nevada statutes, then the customer is deemed an "eligible customer" as used in NRS 707.480.

Additionally, ETCs are required to comply with the FCC's new certification process prior to seeking any federal Lifeline reimbursement.

III. PROCEDURAL HISTORY

- On March 15, 2012, the Commission voted to open an investigation regarding recent FCC decisions that could affect all Nevada telecommunications carriers. This matter has been designated by the Commission as Docket No. 12-03019.

- On November 18, 2011, the FCC released an order and further notice of proposed rulemaking concerning a broad transformation of the federal USF and ICC regimes, generally referred to as the USF/ICC Transformation Order. The USF/ICC Transformation Order comprehensively reforms the existing universal service and intercarrier compensation programs. Additionally, on February 6, 2012, the FCC released another order regarding reformation of the federal universal service Lifeline program, generally referred to as the Lifeline Reform Order. The Lifeline Reform Order resulted in a comprehensive change to the federal Lifeline Program, including the eligibility requirements for the program. The Commission opened this investigation to consider and implement the FCC's USF/ICC Transformation Order and the Lifeline Reform Order.

• On March 22, 2012, the Commission issued a Notice of Investigation and Notice of Workshop.

• The Regulatory Operations Staff ("Staff") of the Commission participates as a matter of right, pursuant to NRS 703.301.

• This matter is being conducted by the Commission pursuant to the NRS and the Nevada Administrative Code ("NAC"), Chapters 703, 704, and 707 including but not limited to, NRS 704.040, 704.684, 704.6873 and 704.68861 through 704.68887, inclusive.

• On April 4, 2012, the Commission held a workshop in order to formulate and simplify the issues involved in this proceeding and set a procedural schedule.

• On April 6, 2012, the Presiding Officer issued a Procedural Order, adopting a procedural schedule establishing four phases for consideration of the two FCC orders and establishing deadlines for comments and new dates for a continued Workshop. Specifically, Phase 2 is directly related to the Lifeline Reform Order. The Commission requested that all participants answer the following questions in comments regarding Phase 2: (1) Do any Commission regulations needs to be changed to comport with the FCC's Lifeline Reform Order? (2) What should Nevada do with respect to auto enrollment in the Lifeline Reform order? (3) What should carriers do with the list provided by the Department of Health and Human Services with potential Lifeline customers and should the list even continue? and (4) Are there any eligibility issues that must be considered in light of the FCC's Lifeline Reform Order?

• On April 18, 2012, Phase 1 Comments were filed by Nevada Telecommunications Association ("NTA"), Lincoln County Telephone System, Inc. ("Lincoln"), Moapa Valley Telephone Company ("Moapa"), Rio Virgin Telephone Co. d/b/a Reliance Connects ("Reliance Connects"), Citizens Telecommunications Company of Nevada ("CTCN"), Frontier Communications of the Southwest, Inc. ("Frontier"), and CenturyTel of the Gem State, Inc. d/b/a CenturyLink, and Staff.

• On April 25, 2012, Phase 1 Reply Comments were filed by NTA, Lincoln, Moapa, Reliance Connects, CTCN, Frontier, and CenturyTel of the Gem State, Inc. d/b/a CenturyLink, and Staff.

• On May 2, 2012, the Commission held a workshop. The workshop was continued until June 4, 2012.

• On May 7, 2012, Phase 2 Comments were filed by Nevada Bell Telephone Company d/b/a AT&T Nevada and AT&T Wholesale, AT&T Corp. and TCG Los Angeles, New Cingular Wireless PCS, LLC d/b/a Cingular Wireless (collectively, the "AT&T Companies"), CTCN, Frontier, Central Telephone Company d/b/a CenturyLink and CenturyTel of the Gem State, Inc. d/b/a CenturyLink (collectively, "CenturyLink"), Lincoln, Moapa, Reliance Connects (collectively, "Small PLRs"), Cox Nevada Telcom, LLC ("Cox"), the Attorney General's Bureau of Consumer Protection ("BCP"), NTA and Staff.

• On May 15, 2012, the Commission filed Comments in various FCC dockets (WC Docket Nos. 11-42, 03-109 and 12-23, and CC Docket No. 96-45) concerning a Petition for Waiver filed by the United States Telecom Association ("U.S. Telecom"), wherein U.S. Telecom listed Nevada as one of the states that requires waiver from the FCC's new regulations regarding certification forms that customers must sign before being enrolled in Lifeline.

• On May 18, 2012, Phase 2 Reply Comments were filed by Budget Prepay, Inc. d/b/a Budget Mobile ("Budget").

• On May 21, 2012, Phase 2 Reply Comments were filed by BCP, Small PLRs, AT&T Companies, and Staff.

• On May 21, 2012, the Presiding Officer issued a Draft Order regarding Phase 1 issues.

• On May 23, 2012, the Commission voted at its regularly scheduled agenda meeting to expand the docket to include rulemaking, approve the Presiding Officer's recommendations on Phase 1 issues outlined in the Draft Order, and issue the Order.

• On May 23, 2012, the Commission filed its own Petition for Waiver in various FCC dockets (WC Docket Nos. 11-42, 03-109 and 12-23 and CC Docket No. 96-45), requesting that the FCC waive specific regulations that are in conflict with Nevada's statutes.

• On May 23, 2012, Phase 2 Reply Comments were filed by Central Telephone Company d/b/a CenturyLink.

• On June 4, 2012, the Commission held a workshop in which a discussion was held regarding Phase 2 issues and the participants' request that the Commission issue a declaratory order on the interpretation of NRS 707.480 due to the shortened timeframe allotted by the FCC for compliance with the FCC's Lifeline Reform Order concerning automatic enrollment of Lifeline recipients. The participants also discussed drafting proposed modifications to the Commission's regulations which are impacted by the USF/ICC Transformation Order and the Lifeline Reform Order, and the need for a continued workshop.

• On June 11, 2012, pursuant to the discussion at the June 4, 2012 workshop, Staff filed a Draft Declaratory Order.

• On June 14, 2012, the Presiding Officer issued Procedural Order No. 2, setting a procedural schedule for filing comments in response to the Draft Declaratory Order by other participants, draft proposed modifications to the Commission's regulations which are impacted by the USF/ICC Transformation Order and the Lifeline Reform Order, and a continued workshop.

• On June 14, 2012, CenturyLink filed Joint Comments in support of Staff's Draft Declaratory Order.

• On June 15, 2012, Cox, Budget, Sprint Nextel Corporation and Virgin Mobile USA, L.P., and TW Telecom of Nevada LLC filed Comments in support of Staff's Draft Declaratory Order. Also on June 15, 2012, NTA and Small PLRs filed a Joinder in Joint Comments of CenturyLink in support of Staff's Draft Declaratory Order.

IV. COMMENTS

AT&T Companies Comments

1. The AT&T Companies state that, pursuant to NRS 707.480, automatic enrollment of customers for lifeline or link up services contemplates the identification of eligible customers by the Department onto a mailing list which is sent to the applicable ETC. (AT&T Companies' Comments at 2.) The ETC is then required to automatically enroll eligible customers within 60 days, unless the customer specifically requests to not be enrolled. (*Id.*)

2. The AT&T Companies state that the Lifeline Reform Order "essentially eliminates automatic enrollment as it currently exists, by requiring the intermediary step of customer consent prior to enrollment by carriers." (*Id.*)

3. The AT&T Companies state that automatic enrollment under NRS 707.480 does not conform to the FCC's new requirements because it does not permit the intermediary step of customer consent through completion of certification forms. (*Id.*) The mailing list from the Department is circulated twice a year in accordance with NRS 707.480, and the list is expected to be distributed again in October 2012. (*Id.* at 3.) The FCC's new regulations prohibiting automatic enrollment became effective on June 1, 2012, so it is the October 2012 mailing list that will be problematic. (*Id.*) The AT&T Companies recommend that the Commission obtain a compliance waiver from the FCC prior to October 2012 or shut down the automatic enrollment process. (*Id.*) Specifically, the AT&T Companies recommend that the Commission obtain its own waiver or file comments in response to the pending Petition for Waiver filed by U.S. Telecom. (*Id.* at 3-4.)

4. The AT&T Companies state that if the Commission is unable to obtain a waiver from the FCC, "then the Commission should consider appropriate orders to shut down the

Nevada automatic enrollment process until the Nevada legislature can make appropriate corrections in Spring 2013." (*Id.* at 5.)

5. The AT&T Companies recommend that the Commission take action to control and define eligibility criteria consistent with the FCC's Lifeline Reform Order. (*Id.* at 5.) Because "[t]he list of 'eligible customers' under NRS 707.470 is to be determined by 'criteria adopted by the Public Utilities Commission of Nevada or the Federal Communications Commission,'" the Commission could issue an order to the Department explaining that no customer is eligible for automatic enrollment in the Lifeline program. (*Id.*)

BCP Comments

6. BCP states that the automatic enrollment process set forth in NRS 707.470 and 707.480 "is no longer appropriate given the new FCC rules and regulations." (BCP Comments at 4.) BCP acknowledges that the statute must be amended by the Legislature, but states that ETCs cannot enroll a customer in Lifeline under the current statutes. (*Id.*) BCP states that the FCC has set forth an approach that requires affirmative action from a potential Lifeline customer before an ETC can seek reimbursement for Lifeline services. (*Id.*)

7. BCP states that the provisions of NAC 704.680474 should be amended to reflect the new process set forth in the CFR for getting certification forms from customers. (*Id.* at 4-5.)

CenturyLink Comments

8. CenturyLink states that the primary issue that needs to be addressed by the Commission is the conflict between the Lifeline Reform Order's restrictions on automatic enrollment and Nevada's statutory requirements for ETCs to automatically enroll certain existing customers. (CenturyLink Comments at 2.)

9. CenturyLink states that the FCC's Lifeline Reform Order requires states with automatic enrollment to modify their procedures so that applicants must expressly consent to participation in Lifeline and certify the applicant's eligibility (*Id.* at 3.), but existing Nevada law operates to effectuate automatic enrollment. (*Id.* at 5.)

10. CenturyLink states that Nevada's current process requires ETCs to determine whether their own subscribers can be "eligible customers," through comparing the list from the Department to each ETC's customer data. (*Id.* at 3.) In the case of CenturyLink, if one of CenturyLink's customers matches up with a name on the list from the Department, CenturyLink is required to begin applying the Lifeline program discounted rate not later than 60 days after receipt of the list, unless the customer declines the Lifeline discount. (*Id.*)

11. CenturyLink states that Nevada's automatic enrollment process is set forth in statute; thus, CenturyLink believes it is important for the Commission to take a practical approach to comply with the FCC's Lifeline Reform Order and new regulations, "taking into account the need for ETCs to remain eligible for reimbursement for Lifeline discounts made to new Lifeline subscribers ..." (*Id.* at 6.) While CenturyLink ultimately believes that the existing statute at issue, NRS 707.480, will have to be amended as a result of the Lifeline Reform Order, CenturyLink thinks that it is appropriate at this time to strike a balance between the FCC's new requirements and Nevada law. (*Id.* at 7-8.)

12. CenturyLink states that because the FCC's new regulations require signed certifications from newly enrolled Lifeline subscribers beginning on June 1, 2012, it can be inferred that the FCC Lifeline Reform Order prohibits automatic enrollment beginning on June 1, 2012. (*Id.* at 7.)

13. CenturyLink states that ETCs cannot expect to add Lifeline subscribers pursuant to the procedures set forth in NRS 707.480 after June 1, 2012. (*Id.*) CenturyLink argues that no one on the Department's mailing list can be considered an "eligible customer" after June 1, 2012. (*Id.*) In order to strike a balance between the Lifeline Reform Order and existing Nevada law, CenturyLink recommends sending notices to customers on the mailing list that otherwise would be eligible. (*Id.* at 7-8.) In that notice, CenturyLink would advise the customer that he or she may be eligible for Lifeline discounted service, and that the customer has to fill out the appropriate certification form with the supporting documentation and return it to CenturyLink in order to receive the Lifeline discount. (*Id.* at 8.) CenturyLink believes that this approach is consistent with the Lifeline Reform Order and Nevada law. (*Id.*)

14. CenturyLink also recommends that the Commission file comments to the U.S. Telecom Petition for Waiver and consider filing a separate Petition for Waiver with the FCC. (*Id.* at 5.)

Cox Comments

15. Cox states that the automatic enrollment process under existing Nevada law must be modified in accordance with the FCC's new regulations. (Cox Comments at 3.) Cox states that the Commission may need to determine whether the current process of automatic enrollment can be modified to provide for coordinated enrollment, which the Lifeline Reform Order states is recognized as a best practice based on the FCC's evidentiary record. (*Id.*) Cox requests that the Commission consider coordinated enrollment or determine "if a completely different process should be utilized to allow eligible consumers to subscribe to Lifeline." (*Id.*)

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CTCN & Frontier Comments

16. Frontier recommends that the Commission support the U.S. Telecom Petition for Waiver to allow for continuation of Nevada's automatic enrollment process until legislation can be passed to modify the Nevada statutes. (CTCN & Frontier Comments at 2, 4.)

Small PLRs Comments

17. The Small PLRs state that in order to ensure for the continued flow of federal Lifeline funding, careful revisions to the Lifeline regulations and statutes should be made. (Small PLRs Comments at 1.)

Staff Comments

18. Staff states that NRS Chapter 707 (*i.e.*, NRS 707.480) and the FCC's new regulations will be in conflict on June 1, 2012, when the relevant FCC regulations go into effect. (Staff Comments at 4.) Staff recommends that the Commission take some action regarding this matter until a statutory change can occur. (*Id.*)

19. Staff proposes that one step the Commission could take is to file comments to the U.S. Telecom Petition for Waiver. (*Id.*) Staff recommends that the Commission may want to independently file its own waiver petition regarding the conflict between the FCC's regulations and the relevant state statutes. (*Id.*)

V. REPLY COMMENTS

AT&T Companies Reply Comments

20. The AT&T Companies state that they support the comments filed by the Commission on May 15, 2012, regarding the U.S. Telecom Petition for Waiver before the FCC. (AT&T Companies Reply Comments at 2.) The AT&T Companies also support the Commission's separate Petition for Waiver. (*Id.*)

BCP Reply Comments

21. BCP states that several commenters noted that Nevada's automatic enrollment process must be discontinued because it conflicts with the FCC's new rules. (BCP Reply Comments at 4.) BCP states that there may be some value in continuing the list of eligible Lifeline customers, if only for the purpose of identifying such customers. (*Id.*) BCP agrees with the AT&T Companies that a carrier has an obligation to obtain an executed certification form from the customer before applying to receive a Lifeline discount on behalf of the customer. (*Id.* at 4-5.)

Budget Reply Comments

22. Budget states that it agrees with other commenters that the Commission needs to re-evaluate the current automatic enrollment process for Lifeline. (Budget Reply Comments at 3.) Budget agrees that automatic enrollment, as it is currently implemented, conflicts with the FCC's Lifeline Reform Order since the FCC's new order requires express consent from the consumer before being enrolled in Lifeline. (*Id.*) Given the conflict, Budget states that it supports eliminating automatic enrollment and "moving towards an opt-in process whereby Lifeline enrollment is determined by a consumer's eligibility and consent to being enrolled in the program." (*Id.*)

CenturyLink Reply Comments

23. CenturyLink states that there appears to be consensus among the parties that the Commission needs to address the issue of automatic enrollment under Nevada's statutes in accordance with the FCC's Lifeline Reform Order. (CenturyLink Reply Comments at 1.) The issue needs to be addressed both from a short-term and long-term perspective. (*Id.*) The long-term solution requires resolution by the Legislature. (*Id.* at 2.)

24. The short-term solution may depend upon whether the FCC grants the U.S. Telecom Petition for Waiver or the Commission's Petition for Waiver. (*Id.*) CenturyLink states that it continues to support the practical approach presented in its initial comments. (*Id.*) If the waiver requests are not granted, CenturyLink proposes that it will send notices to customers identified on the mailing list that otherwise would have been automatically eligible for Lifeline. (*Id.*) "In that notice, CenturyLink would advise the customer that they may be eligible for Lifeline service, and that they should fill out the appropriate certification form and return it to CenturyLink in order to receive the Lifeline discount." (*Id.* at 2.) CenturyLink believes this process is consistent with the FCC's Lifeline Reform Order and takes into account existing Nevada law. (*Id.* at 2-3.)

25. CenturyLink states that it disagrees with the AT&T Companies' comments, wherein they appear to be suggesting that there will not be a need for the mailing list from the Department. (*Id.* at 3, n.4.) CenturyLink states that the list should continue consistent with Nevada's statutes, until a long-term solution is arranged. (*Id.*)

26. CenturyLink argues that, out of an abundance of caution, the Commission may need to issue an order in this docket directing the Department to continue issuing the mailing list, and ordering ETCs to seek additional certification from customers after receipt of the mailing list from the Department. (*Id.* at 3.) The Commission's order could include a finding that the certification process is consistent with existing Nevada law. (*Id.* at 3.)

Small PLRs Reply Comments

27. To avoid conflict between state and federal law, the Small PLRs recommend that the Commission issue an order clarifying that ETCs no longer need to enroll customers based upon the mailing list provided by the Department. (Small PLRs Reply Comments at 2.) The

Small PLRs agree with the AT&T Companies' initial comments that the Nevada statutes permit the Commission to control the eligibility framework. (*Id.*) Given the FCC's Lifeline Reform Order, a customer on the Department's mailing list can no longer be deemed an "eligible customer" pursuant to the statute, and additional steps are required to ensure eligibility consistent with the FCC's new requirements. (*Id.*)

28. The Small PLRs state that "the Commission should issue an order, based on the FCC's Lifeline Reform Order, stating that effective June 1, 2012, eligibility is no longer conclusive based on the list distributed on or about May 1, 2012, by the Department of Health and Human Services." (*Id.* at 3.)

Staff Reply Comments

29. Staff states that the Commission needs to address the inconsistency between Nevada's statutes and the FCC's Lifeline Reform Order; specifically, the requirements in NRS Chapter 707 (*e.g.*, NRS 707.470 and 707.480) and the FCC's new regulations (*e.g.*, 47 C.F.R. §§ 54.407(d), 54.410(b)(2) and 54.410(c)(2)). (Staff Reply Comments at 1.) Staff states that such conflicts were addressed by other commenters in this proceeding, notably CenturyLink. (*Id.*)

30. Staff states that because of this conflict, Nevada customers are at risk of losing federal Lifeline support. (*Id.* at 3.) Staff notes that the Commission's Office of General Counsel has already filed comments in support of U.S. Telecom's Petition for Waiver regarding this issue. (*Id.*) Staff also states they were informed that the Commission intends on filing its own Petition for Waiver. (*Id.*)

31. Staff is concerned that, based upon a telephone conference with FCC staff, it is possible the Commission will not be granted a waiver for the full amount of time that may be

required to change the statute. (*Id.*) Staff states that the FCC staff is concerned with granting the Commission an extended waiver (*i.e.*, anything beyond 3 to 6 months) of the FCC's new regulations. (*Id.*) Staff states that because federal Lifeline funding is at risk for Nevada subscribers, Staff agrees with CenturyLink that the Commission should take a practical approach to this issue. (*Id.*)

32. Staff also agrees with CenturyLink that the Commission may be able to implement an approach for interpreting NRS 707.480 that enables carriers to both comply with existing Nevada law, while also complying with the FCC's new regulations. (*Id.*) Staff states that NRS 707.480(3) requires a provider to begin billing an "eligible customer" for Lifeline within 60 days after receiving the mailing list from the Department. (*Id.*) However, Staff states that NRS 707.430 defines "eligible customer" as "a customer who is eligible to receive lifeline or link up services." (*Id.* at 3-4.)

33. Staff agrees with CenturyLink that after June 1, 2012, providers cannot be expected to add Lifeline customers based upon the list provided by the Department. (*Id.* at 4.) Staff states that although the customers on the Department's mailing list utilize the eligibility criteria set forth in the NAC, such customers no longer can be considered "eligible customers" as they are not eligible to receive federal Lifeline discounts under the FCC's new regulations. (*Id.*)

34. Staff believes the approach outlined by CenturyLink may be appropriate and lawful under the NRS. (*Id.*) Accordingly, Staff requests that the Commission issue an order stating that after the Department issues its mailing list, a provider shall send a notice of eligibility to a customer, and the provider will require the customer to complete and return the necessary certification forms as outlined in the FCC's new regulations to ensure eligibility. (*Id.*) Staff states that once the forms are returned by the customer and the provider ensures that the

customer is an "eligible customer," the provider will have 60 days to begin billing the customer as a Lifeline customer in accordance with NRS 707.480. (*Id.*) As such, Staff believes that the provider will be required to take the extra steps (*i.e.*, the customer certification forms) to ensure eligibility pursuant to the FCC's new regulations. (*Id.* at 5.)

35. Staff states that it does not agree, as expressed in some comments, that the Department can determine on its own that it will not issue a list. (*Id.*) Staff references the language in NRS 707.470(1) which states that the Department "shall provide" such a list. (*Id.*) Therefore, Staff believes that the Department cannot stop issuing the list under the current statute. (*Id.*)

36. Staff also states that because "NRS 707.470(1) discusses criteria adopted by this Commission ***or*** the FCC," the Commission can consider whether the Department has obligations related to the FCC's new requirements. (*Id.*) However, Staff argues that given the amount of work that would likely be involved in the Department collecting additional certification forms from every subscriber, Staff is hesitant to argue that that these obligations should fall on the Department without some involvement by this state agency. (*Id.*)

VI. COMMISSION DISCUSSION AND FINDINGS

37. The process of automatic enrollment is set forth in Chapter 707 of the NRS. Specifically, NRS 707.470 states that the Department "shall provide to each eligible provider a list of eligible customers, as determined by the criteria adopted by the Public Utilities Commission of Nevada or the Federal Communications Commission, as appropriate, who are located within the service area of the eligible provider." (NRS 707.470(1).) The Department is required to update the list every six (6) months. (NRS 707.470(2).)

38. The obligations of an ETC or "eligible provider" upon receipt of the Department's mailing list are set forth in NRS 707.480, which states:

> 1. An eligible provider, within 7 days after determining that a person located in its service area is an eligible customer, shall notify the eligible customer that the eligible customer will receive lifeline or link up services, or both, unless the eligible customer specifically declines to receive the services. The notification must include:
>
> (a) Information about the lifeline and link up services, including, without limitation, the date on which the services will begin and any options or responsibilities that the eligible customer may have related to the receipt of those services;
>
> (b) A self-addressed, postage paid response card which the eligible customer must return to the eligible provider to decline the services; and
>
> (c) A statement that the eligible provider will automatically provide lifeline or link up services, or both, to the eligible customer unless the eligible customer declines the services by timely returning to the eligible provider the response card included with the notification.
>
> 2. To decline lifeline or link up services, an eligible customer must return the response card included in the notification provided pursuant to subsection 1 to the eligible provider not later than 10 days before the date on which the services are scheduled to begin.
>
> 3. *An eligible provider shall begin billing an eligible customer for lifeline or link up services, or both, not later than 60 days after the date on which the eligible provider receives the list of eligible customers from the Department which includes the eligible customer, if the eligible customer has not declined the services.*
>
> 4. An eligible provider shall continue providing lifeline services to an eligible customer for as long as the eligible customer continues to receive telecommunication services from the eligible provider until the customer or the Department notifies the eligible provider that the customer is no longer eligible for the program. The eligible provider shall discontinue providing lifeline services to an eligible customer if the eligible customer notifies the eligible provider in writing that the eligible customer wishes to discontinue receiving those services.

(NRS 707.480 (emphasis added).)

39. Pursuant to the statute, upon receiving a list from the Department, the provider must notify the "eligible customer" within a certain timeframe that he or she will receive lifeline, unless the eligible customer specifically declines to receive the services. (*See* NRS 707.480(1).) Eligible customers in turn have a specific number of days to decline Lifeline service. (*See* NRS 707.480(2).) Ultimately, an eligible provider is required to enroll an eligible customer for

Lifeline no later than 60 days after receiving the list from the Department, unless the customer declines Lifeline service. (*See* NRS 707.480(3).)

40. NRS 707.430 defines "eligible customer" as a customer who is eligible to receive lifeline or link up services.

41. The FCC's Lifeline Reform Order expressly prohibits states from using automatic enrollment. The Lifeline Reform Order states:

> 172. *Discussion. We limit the ability of states and their agents to automatically enroll a consumer in Lifeline without the consumer's express authorization in order to protect the Fund against duplicative Lifeline support, increase adherence to consumer certification rules, and ensure that all ETCs have an opportunity to compete for subscribers. . . .*
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> 173. While automatic enrollment programs increase consumer enrollment in Lifeline, some features of these programs may have the unintended consequences of excessively burdening the Fund, may undermine Commission objectives to reduce waste and prevent duplicative support, and limit ETCs' opportunities to compete for consumers. For example, in one state, Verizon must apply the Lifeline discount to any existing Verizon wireline consumer identified as receiving benefits from the that state's Office of Temporary Disability Assistance. The consumer subsequently receives a letter from the state explaining that they have been enrolled in Verizon's Lifeline program and must opt-out if they do not want the discount. . . . Not only can competition among ETCs for low-income consumers be frustrated by automatic enrollment processes that favor a single provider, but this process may lead to duplicative claims. For example, a Verizon wireline subscriber that is automatically enrolled in Verizon's Lifeline program and given the Lifeline discount may already be receiving Lifeline support from a wireless Lifeline provider. Automatic enrollment may also prevent ETCs from complying with certification and other requirements we adopt in this Order meant to reduce waste in the Fund. In states with automatic enrollment, automatically enrolled consumers are unable to attest, under penalty of perjury, that they are the only person in their household receiving Lifeline prior to enrollment. *In light of the rule changes we adopt today, states with automatic enrollment programs must modify those programs, as necessary, to comply with our rules, so that consumers are not automatically enrolled without consumers' express consent.*

(Lifeline Reform Order at 76-77, ¶¶ 172-73 (citations omitted) (emphasis added).)

42. In addition to the express prohibition on automatic enrollment, the FCC's regulations further preclude automatic enrollment by requiring certification forms to be

completed by potential Lifeline subscribers prior to receiving a Lifeline discount. For example, 47 C.F.R. § 54.410(c)(2) states:

> (2) Where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based eligibility criteria . . . an eligible telecommunications carrier must not seek reimbursement for providing Lifeline to a subscriber unless the carrier has received from the state Lifeline administrator or other state agency: . . . (ii) a copy of the subscriber's certification that complies with the requirements set forth in paragraph (d) of this section.

(47 C.F.R. § 54.410(c)(2).)

43. The certification form requirements are set forth in 47 C.F.R. § 54.410(d). The form requires fairly detailed information from the subscriber, including the subscriber's date of birth and the last four digits of the subscriber's social security number. (*See* 47 C.F.R. § 54.410(d)(2).) Additionally, the form requires each subscriber to certify several items, under penalty of perjury, including: 1) the subscriber meets the eligibility criteria; 2) the subscriber will notify its carrier within 30 days if the subscriber no longer meets the eligibility criteria; and 3) the subscriber's household will receive only one Lifeline service. (*See* 47 C.F.R. § 54.410(d)(3).)

44. The Commission finds that consistent with the comments and reply comments filed in this Docket, there is a conflict between the FCC's new regulations and existing Nevada law. Specifically, NRS 707.480, which requires automatic enrollment of Lifeline customers within 60 days after the eligible customer list is distributed by the Department, is inconsistent with the FCC's new regulatory scheme which requires customers to complete certification forms prior to being enrolled in Lifeline.

45. In an effort to resolve this conflict, the Commission filed comments with the FCC regarding the U.S. Telecom Petition for Waiver, and filed its own Petition for Waiver in the

relevant FCC dockets. In response to the U.S. Telecom Petition for Waiver, the FCC granted a Waiver Order for a period of six (6) months.[3] The FCC has not acted on the Commission's separate Petition for Waiver. As such, in order to preserve federal Lifeline funding to Nevada ETCs, the Commission believes it is appropriate to make a determination as to whether the current statute can be read in such a way to be consistent with the FCC's Lifeline Reform Order and new regulations.

46. As noted above, NRS 707.470 provides a process whereby the Department creates a list of "eligible customers" consistent with criteria adopted by the Commission or the FCC. The statutory language in NRS 707.470 gives equal recognition to the FCC's and Commission's requirements for eligibility. The Commission understands that the Department currently creates the mailing list based solely upon the Commission's regulations.[4] (*See, e.g.*, NAC 704.680474.)

47. Additionally, upon receipt of the Department's list of eligible customers, ETCs undertake a second layer of review to determine if a customer on the list is an "eligible customer" pursuant to NRS 707.480 for which the ETC must send out notification cards and enroll within 60 days. For example, an ETC reviews the Department's list and compares the names on that list with the ETC's own list of current customers. If a current customer is on the Department's list but is not a Lifeline subscriber, then the ETC sends out a notification to the "eligible customer" stating that the customer will receive Lifeline service unless the customer opts out of such service.

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[3] *In the Matter of Lifeline and Link Up Reform and Modernization*, Waiver Order, WC Docket Nos. 11-42, 03-109 and 12-23 and CC Docket No. 96-45, DA 12-863, at 3, ¶ 4 (rel. May 31, 2012).

[4] *See* NRS 707.470(1) which states: "The Department shall provide to each eligible provider a ***list of eligible customers***, as determined by criteria adopted by the Public Utilities Commission of Nevada or the Federal Communications Commission, as appropriate, who are located within the service area of the eligible provider." (emphasis added).

48. Based on the foregoing practice, there appears to be a distinction between the definitions of: 1) "eligible customer" under NRS 707.470 for purposes of creating the Department's mailing list, and 2) "eligible customer" under NRS 707.480 who an ETC is required to enroll in Lifeline absent an opt-out.

49. As noted above, NRS 707.430 defines "eligible customer" as a customer who is eligible to receive lifeline or link up services.

50. NRS 707.470 contemplates that a list of "eligible customers" will be determined by criteria from this Commission or the FCC, as appropriate. In addition, "eligible customer" is defined broadly and generically as any customer eligible for Lifeline. Therefore, the Commission believes that "eligible customer" as used in NRS 707.480 can be interpreted broadly to encompass the new FCC eligibility criteria, specifically the certification form.[5] This is consistent with the parties' comments and reply comments that acknowledge that the statute can be read in a practical manner now to comport with the new FCC requirements, but can be revised by the Legislature in 2013 to more clearly reflect the FCC's mandates. This also is consistent with the current practice, whereby the ETC already is required to undertake an extra level of review to determine whether a customer is an "eligible customer" pursuant to NRS 707.480 when compared to the eligible customers identified by the Department pursuant to NRS 707.470.

51. More specifically, the Commission believes, based upon the language in the statute and the record in this proceeding, that the term "eligible customer" as used in NRS 707.480 can be read in harmony with the FCC's new requirements. A customer should not be considered an "eligible customer" for purposes of NRS 707.480 until such time as the ETC has

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[5] The Commission notes that a process is underway in this docket to update the Commission's regulations to bring them into compliance with the FCC's new regulations. As part of the rulemaking in this Docket, the parties were asked to consider drafting regulations that would require the list from the Department to fully comply with the FCC's new requirements.

determined that the customer also meets all of the FCC's new requirements set forth in the Lifeline Reform Order and all corresponding federal regulations.

52. As such, given the FCC's new requirements, the current statutory scheme will operate as follows. First, the Department shall continue to create a mailing list consistent with the Commission's regulations. The Department shall continue to distribute the mailing list to ETCs. Upon receipt of the list, the ETCs shall determine whether any of the ETC's current customers are on the Department's mailing list.[6] Next, once an ETC has identified a current customer who is also on the Department's mailing list (and assuming the customer is not already a Lifeline subscriber), the ETC shall send out a notification to the customer, along with the new certification forms required by the FCC's regulations. Once the customer has completed the FCC's new certification process, then the customer can be enrolled in Lifeline, and the ETC may seek a federal Lifeline reimbursement. A customer will not be deemed to be an "eligible customer" for purposes of NRS 707.480 until such time as the customer has completed the new certification forms required by the FCC.

53. The Commission notes that for income-based eligibility, ETCs shall continue to follow the current process in the Commission's regulations (NAC 704.680474(1)-(2)), in addition to requiring customers to complete the additional certifications as set forth in the FCC's regulations.

54. Additionally, when determining program-based eligibility for any program not encompassed by the Department's mailing list (including new programs outlined in the FCC's regulations that qualify for Lifeline, (*see* 47 C.F.R. § 54.400(j))), the ETC shall review the necessary documentation needed to support the fact that the customer is enrolled in the program

[6] The ETCs should only be using the list from the Department to match current customer with persons on the list. No ETC should utilize the list from the Department for any marketing purpose.

(*see* NAC 704.680474(3)). The ETC shall also require the customer to qualify for program-based eligibility pursuant to the FCC's new regulations, including completing a certification form.

THEREFORE, it is ORDERED that:

1. Eligible Telecommunications Carriers seeking reimbursement for providing a federal Lifeline discount to customers shall perform the following requirements in accordance with Nevada Revised Statutes 707.480, the Federal Communications Commission's Lifeline Reform Order, and the federal regulations adopted as part of the Lifeline Reform Order:

(a) Upon receipt of the list from the Department of Health and Human Services and pursuant to Nevada Revised Statutes 707.470, the Eligible Telecommunications Carriers shall determine whether any of the Eligible Telecommunications Carrier's current customers match up with a person on the list as distributed by the Department of Health and Human Services.

(b) Once an Eligible Telecommunications Carrier has matched up a current customer that is not subscribed already as a Lifeline customer with a name on the list from the Department of Health and Human Services, the Eligible Telecommunications Carriers shall send out notification pursuant to Nevada Revised Statutes 707.480(1), and provide the customer with the required new certification forms pursuant to the Federal Communication Commission's regulations. This process shall be done in conformance with the time frame set forth in Nevada Revised Statutes 707.480(1).

(c) If the customer does not decline Lifeline service in accordance with Nevada Revised Statutes 707.480(2) and the customer returns the required new Federal

Communications Commission certification form, the customer shall be deemed an "eligible customer" for purposes of Nevada Revised Statutes 707.480.

2. For purposes of determining eligibility for Lifeline in accordance with the Nevada Administrative Code, Eligible Telecommunications Carriers are required to comply with the Federal Communications Commission's new certification process prior to seeking any federal Lifeline reimbursement.

3. Eligible Telecommunications Carriers shall retain any certification forms received from customers in accordance with the Federal Communications Commission's new regulations.

4. For purposes of determining program-based eligibility for any program which the Department of Health and Human Services' list does not encompass, Eligible Telecommunications Carriers shall permit customers to qualify for program-based eligibility based upon the list of programs in the Code of Federal Regulations Title 47, Part 54.400(j).

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5. The Commission may correct errors that have occurred in the drafting or issuance of this Order.

By the Commission,

ALAINA BURTENSHAW, Chairman and
Presiding Officer

REBECCA D. WAGNER, Commissioner

DAVID NOBLE, Commissioner

Attest: ____________________
BREANNE POTTER,
Assistant Commission Secretary

Dated: Carson City, Nevada

7-5-12

(SEAL)

PUBLIC UTILITIES COMMISSION OF NEVADA
PUC